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MONSTER ENERGY COMPANY

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

MONSTER ENERGY COMPANY, a Delaware corporation,

Plaintiff,

v.

USA NUTRACEUTICALS GROUP, INC., a Florida corporation, and ULTRA-LAB NUTRITION, INC., a Florida corporation,

Defendants.

Case No. 5:17-CV-0896

COMPLAINT FOR JUDICIAL REVIEW OF TRADEMARK TRIAL AND APPEAL BOARD DECISION, TRADEMARK INFRINGEMENT, FALSE DESIGNATION OF ORIGIN, AND UNFAIR COMPETITION

DEMAND FOR JURY TRIAL

Plaintiff Monster Energy Company ("Plaintiff" or "Monster") hereby complains of Defendants USA Nutraceuticals Group, Inc. and Ultra-Lab Nutrition, Inc. d/b/a Beast Sports ("Defendants"), and alleges as follows:

I. JURISDICTION AND VENUE

1. This is an action for judicial review of a decision of the Trademark Trial and Appeal Board ("TTAB") pursuant to 15 U.S.C. § 1071(b).

2. This is also an action for (1) trademark infringement and false designation of origin under 15 U.S.C. § 1125(a), (2) trademark infringement under 15 U.S.C. § 1114, (3) California common-law unfair competition, and (4) unfair competition arising under California Business & Professions Code §§ 17200 *et seq*.

3. The Court has original subject matter jurisdiction over the appeal of the final decision of the TTAB pursuant to 15 U.S.C. § 1071(b)(1).

4. The Court also has original subject matter jurisdiction over the claims that relate to trademark infringement and false designation of origin pursuant to 15 U.S.C. §§ 1116 and 1121(a) and pursuant to 28 U.S.C. §§ 1331 and 1338, as these claims arise under the laws of the United States. The Court has supplemental jurisdiction over the claims in this Complaint which arise under state statutory and common law pursuant to 28 U.S.C. §§ 1338(b) and 1367(a), because the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

5. This Court has personal jurisdiction over Defendants because Defendants have a continuous, systematic, and substantial presence within this Judicial District and within California. Defendants sell, advertise, market and promote their products in California, including in this Judicial District. For example, Defendants have partnered with several retailers for sales of their products in California, including in this Judicial District. In addition, by

committing acts of trademark infringement, false designation of origin, and unfair competition in this Judicial District, including, but not limited to, using infringing marks in connection with the advertisement, marketing, promotion and sale of products to customers in this Judicial District, Defendants' acts form a substantial part of the events or omissions giving rise to Monster's claims.

6. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) and (c) at least because Defendants reside in this Judicial District by virtue of doing business within the Judicial District and a substantial portion of the events complained of herein took place in this Judicial District.

II. THE PARTIES

7. Monster is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 1 Monster Way, Corona, California 92879.

8. Upon information and belief, Defendant USA Nutraceuticals Group, Inc. is doing business as Beast Sports and is a corporation organized and existing under the laws of the State of Florida, having a principal place of business at 3100 NW Boca Raton Blvd. #213, Boca Raton, Florida 33431.

9. Upon information and belief, Defendant Ultra-Lab Nutrition, Inc. is doing business as Beast Sports and is a corporation organized and existing under the laws of the State of Florida, having a principal place of business at 3100 NW Boca Raton Blvd., #213, Boca Raton, Florida 33431.

III. COMMON ALLEGATIONS FOR ALL CLAIMS OF RELIEF

A. Monster and Its Trademarks

10. Monster is a nationwide leader in the business of developing, marketing, selling, and distributing beverages including beverages bearing its UNLEASH THE BEAST!® mark. Monster has achieved extensive exposure and widespread recognition of its UNLEASH THE BEAST!® mark, through, for example, sales of billions of cans of its MONSTER line of beverages displaying

the UNLEASH THE BEAST!® mark, sales and licensing of clothing bearing the UNLEASH THE BEAST!® mark, and sponsorship of athletes, teams and events, among other sponsorships.

11. In 2002, Monster launched its MONSTER line of beverages and its original MONSTER ENERGY® drink bearing its now-famous UNLEASH THE BEAST!® mark. Monster's UNLEASH THE BEAST!® mark has also continuously been prominently featured on the Lo-Carb MONSTER ENERGY® product since that product was launched in 2003.

12. Monster's successful MONSTER line of beverages has grown to include numerous other well-known products bearing marks which incorporate a "BEAST" element. In 2009, Monster launched its MONSTER ENERGY EXTRA STRENGTH NITROUS TECHNOLOGY® line of drinks and has continuously used its UNLEASH THE NITRO BEAST!® mark in connection with this line of drinks since it was launched. In 2011, Monster launched its MONSTER REHAB® line of drinks and has continuously used its REHAB THE BEAST!® and REHAB THE BEAST! WWW.MONSTERENERGY.COM® marks in connection with this line of drinks since it was launched. In 2012, Monster launched its MONSTER ENERGY® ULTRA line of drinks and has continuously used its UNLEASH THE ULTRA BEAST!® mark in connection with this line of drinks since it was launched. Since the launch of its MONSTER line of beverages in 2002, Monster has continuously used the UNLEASH THE BEAST!® mark and other marks which incorporate a "BEAST" element on the majority of its cans across its MONSTER line of beverages. Monster's UNLEASH THE BEAST!® mark is the subject of U.S. Trademark Registration No. 2,769,364 in Class 32, registered September 30, 2003, and is incontestable pursuant to 17 U.S.C. § 1065.

13. Monster is also the owner of U.S. Trademark Registration No. 4,975,822 for the mark UNLEASH THE BEAST!® for goods in International

Class 25 including t-shirts, which registration issued on June 14, 2016 and is based on application filed in the United States Patent and Trademark Office ("USPTO") on March 7, 2014. This trademark registration claims a date of first use in commerce of 2002. A true and correct copy of this trademark registration and an amendment to the registration filed by Monster is attached hereto as Exhibit A.

14. Monster also filed in the USPTO the following U.S. trademark applications in International Class 5, which were subsequently opposed by Defendants:

MARK	APP. NO.	GOODS	DATE FILED
REHAB THE BEAST! WWW.MONSTERENERGY.COM	85/543,622	Nutritional supplements in liquid form	02/15/2012
UNLEASH THE ULTRA BEAST!	85/783,034	Nutritional supplements in liquid form	11/19/2012
REHAB THE BEAST!	85/168,304	Nutritional supplements in liquid form	11/03/2010
UNLEASH THE NITRO BEAST!	85/197,756	Nutritional supplements	12/14/2010

15. Collectively, the trademark applications identified in Paragraph 14 of this Complaint are referred to as the "opposed Class 5 trademarks."

16. Most, if not all, of Monster's beverages can be classified under the applicable trademark classifications for goods and services in both International Class 5 and International Classes 32 or 30.

17. An example of Monster's use of its federally registered and incontestable UNLEASH THE BEAST!® mark is shown below:

MONSTER
ENERGY
MONSTER packs a vicious punch but has a smooth flavor you can really pound down.
Unleash the Beast!
www.monsterenergy.com

Examples of Monster's use of its UNLEASH THE NITRO BEAST!®, UNLEASH THE ULTRA BEAST!®, REHAB THE BEAST!® and REHAB THE BEAST! WWW.MONSTERENERGY.COM® marks are shown below:

ZERO SUGAR
MONSTER
ENERGY
ULTRA BLACK
Unleash the Ultra Beast!
www.monsterenergy.com

MONSTER
Rehab
TEA + LEMONADE + ENERGY
Rehab the Beast!
www.monsterenergy.com

MONSTER
ENERGY
EXTRA STRENGTH
NITROUS TECHNOLOGY
Unleash the Nitro Beast!
www.monsterenergy.com

18. Monster's UNLEASH THE BEAST!® and other marks incorporating a "BEAST" element are the subject of substantial and continuous marketing and promotion by Monster. Since 2002, Monster has spent over $4.3 billion dollars in advertising, promoting, and marketing its MONSTER brand,

including its UNLEASH THE BEAST!® and other marks incorporating a "BEAST" element. In 2016 alone, Monster spent $467 million dollars in advertising, promoting, and marketing its brand and marks.

19. Monster has and continues to widely market and promote its MONSTER brand including its UNLEASH THE BEAST!® and other marks incorporating a "BEAST" element by displaying the marks on billions of cans of its MONSTER line of drinks sold in the U.S. Monster's MONSTER line of beverages has achieved substantial commercial success. Worldwide retail sales now exceed 3 billion cans per year, with estimated retail sales at approximately $6 billion per year worldwide. Monster's MONSTER brand has established itself as the best-selling energy drink brand in the United States by unit volume and dollar value. While Monster continues to expand its successful MONSTER line of beverages, Monster's best-selling drink is still the original MONSTER ENERGY®, which since 2002 has prominently featured its UNLEASH THE BEAST!® mark.

20. Monster has distributed millions of point-of-sale marketing items promoting its MONSTER line of drinks, including items bearing its UNLEASH THE BEAST!® mark and other marks incorporating a "BEAST" element. These point-of-sale marketing items include, but are not limited to, case stackers, stickers, displays for shelves, suction cup racks and coolers. Shown below are true and accurate representative pictures illustrating just a few examples of Monster's point-of-sale materials bearing Monster's UNLEASH THE BEAST!® mark and other marks incorporating a "BEAST" element.

Unleash the Beast!
TAURINE + GINSENG
MONSTER
ENERGY

MONSTER
Rehab
Rehab the Beast!

21. Monster also widely markets and promotes its MONSTER brand including its UNLEASH THE BEAST!® mark to consumers through clothing sales and giveaways. Since 2002, Monster has licensed, sold and/or given away clothing bearing its UNLEASH THE BEAST!® mark. Examples of clothing that has been licensed, sold or given away by Monster bearing the UNLEASH THE BEAST!® mark are shown below:

Unleash the Beast!

MONSTER ENERGY

22. Monster's promotional efforts also include – by way of example but not limitation – sponsorship of athletes, athletic teams, athletic competitions, concerts and live events around the world, promotion in magazines and other industry publications, promotion on the MONSTER ENERGY® website and other Internet websites, and attendance at trade shows.

23. Many of Monster's sponsored athletes wear clothing bearing the UNLEASH THE BEAST!® mark. Images of Monster's sponsored athletes wearing clothing bearing the UNLEASH THE BEAST!® mark are seen by viewers at events and frequently appear in printed publications, on the Internet and on television.

24. Monster's UNLEASH THE BEAST!® mark is prominently displayed at live events sponsored by Monster through promotional items. Monster also frequently gives away products bearing its UNLEASH THE BEAST!® mark to attendees at these events.

25. Monster's UNLEASH THE BEAST!® mark has also received significant exposure in national publications. For example, Monster and its UNLEASH THE BEAST!® mark have been featured in *Fortune*, *Newsweek*, *Beverage World*, *Beverage Spectrum*, *Forbes* and *Business Week.*

26. Monster's UNLEASH THE BEAST!® mark was marketed and promoted while prominently displayed on the Las Vegas monorail (the "Monster Train"). In 2003, Monster engaged in a massive advertising campaign in connection with its sponsorship of the Monster Train, which prominently featured the UNLEASH THE BEAST!® mark. The Monster Train was featured in *The Wall Street Journal*, *Time* and *USA Today* in 2003, among other publications, and these articles were read by an estimated 32 million people in the U.S. In addition, television and internet reports that discussed the Las Vegas Monster Train reached another 70 million readers, and television and radio promotions were circulated to approximately 36 million people in the U.S.

27. Monster's UNLEASH THE BEAST!® mark and other marks incorporating a "BEAST" element receive extensive publicity and exposure through Monster's websites including its monsterenergy.com website and social media sites including its Facebook, Twitter, Instagram and YouTube pages. As of June 2015, Monster's monsterenergy.com website was receiving over 50,000 visitors per day. Monster's Facebook page has over 25 million "likes." Monster's Instagram page has over 4 million followers and Monster's Twitter page has over 3.2 million followers. Monster's YouTube page has over 184 million views. Monster's UNLEASH THE BEAST!® mark and other marks incorporating a "BEAST" element are prominently displayed on these websites and social media sites.

28. As a result of Monster's substantial use and promotion of its UNLEASH THE BEAST!® mark and other marks incorporating a "BEAST" element, these marks have acquired great value as specific identifiers of Monster's products and serve to identify and distinguish Monster's products from those of others. Customers in this Judicial District and elsewhere readily recognize Monster's UNLEASH THE BEAST!® mark and other marks incorporating a "BEAST" element as distinctive designations of the origin of Monster's products and promotional items. The UNLEASH THE BEAST!® mark and other marks incorporating a "BEAST" element are intellectual property assets of enormous value as symbols of Monster and its quality products, reputation, and goodwill.

B. Defendants

29. Defendants are engaged in the business of producing, distributing, marketing, and/or selling performance-enhancing nutritional supplement products for use primarily in connection with bodybuilding and weightlifting. For example, Defendants describe their "Beast Mode" nutritional supplement product as a "pre-workout that maximizes intensity and energizes the body to

compete at the highest level."

30. Defendants' performance-enhancing nutritional supplement products are primarily sold in powder and capsule form.

31. The target consumers for Defendants' nutritional supplement products are bodybuilders and weightlifters.

32. Defendants' nutritional supplement products are primarily sold at specialty stores such as GNC, the Vitamin Shoppe and Vitamin World.

33. Defendants' nutritional supplement products are advertised and marketed through publications targeted to weightlifters and bodybuilders such as bodybuilding.com and magazines including *Flex*, *Ironman*, *MuscleMag* and *Muscular Development*.

34. Defendants market their products at trade shows relating to fitness such as LA Fit Expo and Arnold Classic.

35. Without permission or consent from Monster, Defendants have sold and are offering for sale, including on the Internet, clothing bearing a mark identical to Monster's UNLEASH THE BEAST!® mark. An example of Defendants' clothing displaying the infringing mark is shown below:

BEAST
UNLEASH
THE
BEAST

36. Upon information and belief, Defendants were aware of Monster and its UNLEASH THE BEAST!® mark when Defendants commenced their infringing activities.

37. Without permission or consent from Monster, Defendants have infringed Monster's UNLEASH THE BEAST!® mark in interstate commerce by making, using, promoting, advertising, selling, and/or offering to sell clothing in connection with the UNLEASH THE BEAST mark that is identical to Monster's UNLEASH THE BEAST!® mark.

38. Upon information and belief, Defendants' actions alleged herein are intended to cause confusion, mistake, or deception as to the source of Defendants' clothing and are intended to cause consumers and potential customers to believe that Defendants' business and the goods that they offer are associated with Monster or its products, when they are not.

39. Defendants have purposely sold, promoted, marketed, and/or distributed their clothing in a manner that causes a likelihood of confusion with Monster and the UNLEASH THE BEAST!® mark.

40. By virtue of the acts complained of herein, Defendants have created a likelihood of injury to Monster's business reputation and goodwill, caused a likelihood of consumer confusion, mistake, and deception as to the source of origin or relationship of Monster's goods and Defendants' clothing, and have otherwise competed unfairly with Monster by unlawfully trading on and using Monster's UNLEASH THE BEAST!® mark without Monster's permission or consent.

41. Upon information and belief, Defendants' acts complained of herein are willful and deliberate.

42. Defendants' acts complained of herein have caused damage to Monster in an amount to be determined at trial, and such damages will continue to increase unless Defendants are enjoined from their wrongful acts and

infringement.

43. Defendants' acts complained of herein have caused Monster to suffer irreparable injury to its business. Monster will suffer substantial loss of goodwill and reputation unless and until Defendants are preliminarily and permanently enjoined from the wrongful acts complained of herein.

C. Proceedings Between The Parties Before The TTAB

44. On May 25, 2011, Defendants filed Opposition No. 91199986 in the TTAB against Monster's U.S. Trademark Application Serial No. 85/197,756 for the UNLEASH THE NITRO BEAST! mark in connection with "nutritional supplements" in International Class 5.

45. On December 12, 2011, Defendants filed Opposition No. 91202947 in the TTAB against Monster's U.S. Trademark Application Serial No. 85/168,304 for the REHAB THE BEAST! mark in connection with "nutritional supplements in liquid form" in International Class 5.

46. On May 31, 2012, Defendants filed Opposition No. 91205388 in the TTAB against Monster's U.S. Trademark Application Serial No. 85/543,622 for the REHAB THE BEAST! WWW.MONSTERENERGY.COM mark in connection with "nutritional supplements in liquid form" in International Class 5.

47. On March 1, 2013, Defendants filed Opposition No. 91209540 against Monster's U.S. Trademark Application Serial No. 85/783,034 for the UNLEASH THE ULTRA BEAST! mark in connection with "nutritional supplements in liquid form" in International Class 5.

48. The opposition proceedings identified in paragraphs 44-47 were consolidated by the TTAB.

49. Defendants alleged in the opposition proceedings that the opposed Class 5 trademarks were likely to cause confusion with Defendants' trademark registrations, including U.S. Trademark Registration No. 4,334,953 for the mark

BEAST in connection with "dietary and nutritional supplements" in Class 5 and U.S. Trademark Registration No. 2,012,763 for the mark THE BEAST in connection with "vitamins and nutritional food supplements" in Class 5.

50. Defendants asserted other trademark registrations in the opposition proceedings identified in paragraphs 44-47. However, the TTAB only considered Defendants' trademark registrations for BEAST and THE BEAST and Defendants' alleged common law rights in the mark UNLEASH THE BEAST in deciding whether there is a likelihood of confusion caused by Monster's opposed Class 5 trademarks. The TTAB found that Defendants did not have priority for the UNLEASH THE BEAST mark. However, the TTAB found that the opposed Class 5 trademarks were likely to cause confusion with the asserted BEAST and THE BEAST marks.

51. On March 9, 2017, the TTAB issued an Order denying registration of Monster's opposed Class 5 trademarks on the grounds that there is a likelihood of confusion between these marks and Defendants' asserted BEAST and THE BEAST marks, although it stated in its Order that "this is a very close case." Attached hereto as Exhibit B is a true and correct copy of the TTAB's March 9, 2017 decision.

52. The review by this Court of the TTAB's decision is *de novo*, and Monster has the right and ability to submit new evidence in this case that was not in the TTAB record.

53. The TTAB found several important factors in Monster's favor. Specifically, the TTAB found that: (1) "the evidence does not support a finding that [the asserted BEAST and THE BEAST marks] are well-known" (Exhibit B at p. 22); (2) Defendants' BEAST and THE BEAST marks "are not entitled to such a broad scope of protection that they will bar the registration of every mark comprising, in whole or in part, the word 'BEAST'" (Exhibit B at p. 30); and (3) there was no evidence of actual confusion. Nevertheless, the TTAB decided

there was a likelihood of confusion.

54. The TTAB's balancing of the likelihood of confusion factors it considered, and its determination as to some of the factors, were legally incorrect. The following are some examples of errors made by the TTAB.

55. The TTAB erred, for example, in presuming that the parties' goods travel in the same channels of trade and are sold to the same class of purchasers. The TTAB did not consider any evidence of the actual channels of trade used by the parties or the actual consumers of the parties' products when analyzing this factor. Specifically, the TTAB failed to consider that, unlike Monster's ready-to-drink beverage products, Defendants' products are powders and capsules that are used primarily in connection with bodybuilding and weightlifting. In addition, the TTAB failed to consider that Defendants' products are sold through specialty stores such as GNC, the Vitamin Shoppe and Vitamin World and health stores, whereas Monster's products are primarily sold at convenience stores, gas stations, grocery stores, mass merchandisers and drug stores.

56. As another example, the TTAB erred in finding that the factor relating to the absence of any actual confusion over several years only weighed slightly in Monster's favor. Monster submitted extensive evidence of its advertising and promotion of its UNLEASH THE BEAST!® mark and other marks incorporating a "BEAST" element and its sales of billions of cans bearing these marks. The TTAB also did not give proper weight to the fact that Monster's beverages and Defendants' performance-enhancing nutritional supplement products have coexisted in the marketplace for many years without any reported instances of actual confusion when analyzing this factor.

57. The TTAB also erred in deciding that the parties' goods are identical. For instance, the TTAB did not properly consider that the recitation of goods in Monster's U.S. Trademark Application Serial Nos. 85/168,304, 85/543,622 and 85/783,034 are limited to "nutritional supplements in liquid

form." On the other hand, Defendants' U.S. Trademark Registration No. 2,012,763 for THE BEAST is limited to "vitamins and nutritional food supplements." Also, the TTAB did not consider the evidence that Defendants' goods are primarily sold in powder or capsule form, whereas Monster's goods are sold as ready-to-drink beverages.

58. The TTAB further erred in assessing the strength of Defendants' marks and not according more weight to the third-party use of the term "beast" identified by Monster. The TTAB reached its conclusion even though it found that there were several examples of third-party use of the term "beast" in connection with nutritional supplements. It also found that many people use the term "beast" to describe over-the-top activity of sports figures and that Defendants had adopted this meaning.

59. The TTAB also erred in finding that Monster's consumer survey showing that there was no likelihood of confusion between Defendants' marks and Monster's REHAB THE BEAST! WWW.MONSTERENERGY.COM mark was not probative because the use of the REHAB THE BEAST! WWW.MONSTERENERGY.COM mark skewed the results. However, the REHAB THE BEAST! WWW.MONSTERENERGY.COM mark was one of the opposed marks. At the very least, the survey evidence showed that there was no likelihood of confusion between the asserted marks and the REHAB THE BEAST! WWW.MONSTERENERGY.COM mark, and the Board failed to address this issue.

60. The TTAB erred in finding the parties' marks are similar simply because both parties' marks contain the term "beast." The TTAB failed to give proper weight to the additional distinctive elements in the opposed Class 5 trademarks, such as "REHAB," "WWW.MONSTERENERGY.COM," "UNLEASH," "NITRO," and/or "ULTRA." The TTAB's finding regarding similarity of the marks was also inconsistent with its recognition that:

"However, the suggestive nature of 'Beast' (i.e., referring to impressive performance) means Opposer's marks are not entitled to such a broad scope of protection that they will bar registration of every mark comprising, in whole or in part, the word 'Beast.'" Exhibit B at p. 30.

61. In addition, the TTAB erred by not giving sufficient weight to the fact that consumers are likely to exercise a high degree of care when purchasing Defendants' performance enhancing supplements when analyzing the likelihood of confusion factor regarding the conditions under which and buyers to whom sales are made.

62. The errors described in this Complaint are not meant to be an exhaustive list, but rather to provide information regarding this appeal. Monster reserves its right to submit new evidence on any relevant subject matter and to seek judicial review of any aspect of the TTAB decision in this matter.

IV. FIRST CLAIM FOR RELIEF

(Judicial Review of TTAB Decision)

63. Monster hereby repeats, realleges and incorporates by reference paragraphs 1-62 of this Complaint as though fully set forth herein.

64. The Trademark Trial and Appeal Board erroneously concluded that Monster's UNLEASH THE NITRO BEAST! mark in connection with "nutritional supplements" in Class 5 and REHAB THE BEAST!, REHAB THE BEAST! WWW.MONSTERENERGY.COM, and UNLEASH THE ULTRA BEAST! marks in connection with "nutritional supplements in liquid form" in Class 5 are likely to be confused with Defendants' THE BEAST mark in connection with "vitamins and nutritional food supplements" and BEAST mark in connection with "dietary and nutritional supplements."

65. The final decision of the Trademark Trial and Appeal Board in Opposition Nos. 91199986, 91202947, 91205388, and 91209540 should be reversed and vacated, and an order should be entered directing the USPTO to

allow Monster's U.S. Trademark Application Nos. 85/197,756, 85/168,304, 85/543,622 and 85/783,034 to register in Class 5.

V. SECOND CLAIM FOR RELIEF

(Trademark Infringement and False Designation of Origin Under 15 U.S.C. § 1125(a))

66. Monster hereby repeats, realleges, and incorporates by reference paragraphs 1-65 of this Complaint as though fully set forth herein.

67. This is an action for trademark infringement and false designation of origin arising under 15 U.S.C. § 1125(a).

68. As a result of the widespread use and promotion of Monster's UNLEASH THE BEAST!® mark, this mark has acquired strong fame and secondary meaning to consumers and potential customers, in that consumers and potential customers have come to associate the UNLEASH THE BEAST!® mark with Monster.

69. Defendants have infringed the UNLEASH THE BEAST!® mark, and created a false designation of origin, by using in commerce, without Monster's permission, the identical UNLEASH THE BEAST mark in connection with the advertisement, offering for sale, and/or sale of Defendants' clothing.

70. Defendants' actions are likely to cause confusion and mistake, or to deceive as to the affiliation, connection, or association of Monster with Defendants, and/or as to the origin, sponsorship, or approval of Defendants' clothing or Defendants' commercial activities, in violation of 15 U.S.C. § 1125(a).

71. Upon information and belief, Defendants intended to trade upon Monster's reputation and goodwill by causing confusion and mistake among customers and the public and to deceive the public into believing that

Defendants' clothing is associated with, sponsored by or approved by Monster, when it is not.

72. Upon information and belief, Defendants had actual knowledge of Monster's ownership and prior use of the UNLEASH THE BEAST!® mark, and without the consent of Monster, willfully violated 15 U.S.C. § 1125(a).

73. Defendants, by their actions, have damaged Monster in an amount to be determined at trial.

74. Defendants, by their actions, have irreparably injured Monster. Such irreparable injury will continue unless Defendants are preliminarily and permanently enjoined by this Court from further violation of Monster's rights, for which Monster has no adequate remedy at law.

VI. THIRD CLAIM FOR RELIEF

(Trademark Infringement Under 15 U.S.C. § 1114)

75. Monster hereby repeats, realleges, and incorporates by reference paragraphs 1-74 of this Complaint as though fully set forth herein.

76. This is a claim for trademark infringement arising under 15 U.S.C. § 1114.

77. Monster owns valid and enforceable U.S. Trademark Registration No. 4,975,822 for the UNLEASH THE BEAST!® mark in connection with goods in Class 25, including t-shirts.

78. Defendants have used in commerce, without permission from Monster, colorable imitations, and/or confusingly similar marks to Monster's UNLEASH THE BEAST!® mark that is the subject of Monster's U.S. Trademark Registration No. 4,975,822 in connection with the advertising, marketing, and/or promotion of Defendants' clothing. Such use is likely to cause confusion or mistake, or to deceive.

79. Upon information and belief, the activities of Defendants complained of herein constitute willful and intentional infringements of

Monster's registered mark, and Defendants did so with the intent to trade upon Monster's reputation and goodwill by causing confusion and mistake among customers and the public and to deceive the public into believing that Defendants' clothing is associated with, sponsored by, originated from, or are approved by, Monster, when it is not.

80. Upon information and belief, Defendants had actual knowledge of Monster's ownership and prior use of the UNLEASH THE BEAST!® mark, and have willfully violated 15 U.S.C. § 1114.

81. Defendants, by their actions, have damaged Monster in an amount to be determined at trial.

82. Defendants, by their actions, have irreparably injured Monster. Such irreparable injury will continue unless Defendants are preliminarily and permanently enjoined by this Court from further violation of Monster's rights, for which Monster has no adequate remedy at law.

VII. FOURTH CLAIM FOR RELIEF

(Unfair Competition Under California Business & Professions Code §§ 17200 *et seq*.)

83. Monster hereby repeats, realleges, and incorporates by reference paragraphs 1-82 of this Complaint as though fully set forth herein.

84. This is an action for unfair competition under California Business & Professions Code §§ 17200, *et seq.*

85. By virtue of the acts complained of herein, Defendants have intentionally caused a likelihood of confusion among consumers and the public and have unfairly competed in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq*.

86. Defendants' acts complained of herein constitute trademark infringement, unfair competition, and unlawful, unfair, malicious or fraudulent business practices, which have injured and damaged Monster.

87. Defendants, by their actions, have irreparably injured Monster. Such irreparable injury will continue unless Defendants are preliminarily and permanently enjoined by this Court from further violation of Monster's rights, for which Monster has no adequate remedy at law.

VIII. FIFTH CLAIM FOR RELIEF

(California Common Law Unfair Competition)

88. Monster hereby repeats, realleges, and incorporates by reference paragraphs 1-87 of this Complaint as though fully set forth herein.

89. This is an action for unfair competition under the common law of the State of California.

90. Defendants' acts complained of herein constitute trademark infringement and unfair competition under the common law of the State of California.

91. By virtue of the acts complained of herein, Defendants have willfully and intentionally caused a likelihood of confusion among the purchasing public in this Judicial District and elsewhere, thereby unfairly competing with Monster in violation of the common law of the State of California.

92. Defendants' aforementioned acts have damaged Monster in an amount to be determined at trial.

93. Defendants have irreparably injured Monster. Such irreparable injury will continue unless Defendants are preliminarily and permanently enjoined by this Court from further violation of Monster's rights, for which Monster has no adequate remedy at law.

94. Defendants' willful acts of unfair competition under California common law constitute fraud, oppression and malice. Accordingly, Monster is entitled to exemplary damages pursuant to Cal. Civ. Code Section § 3294(a).

/ / /

IX. PRAYER FOR RELIEF

WHEREFORE, Monster prays for judgment as follows:

1. That the Court reverse the Order of the Trademark Trial and Appeal Board in *USA Nutraceuticals Group, Inc., Ultra-Lab Nutrition, Inc. d/b/a Beast Sports v. Monster Energy Company*, Opposition Nos. 91199986, 91202947, 91205388, and 91209540, dated March 9, 2017 denying registration of Monster's UNLEASH THE NITRO BEAST!, REHAB THE BEAST!, REHAB THE BEAST! WWW.MONSTERENERGY.COM, and UNLEASH THE ULTRA BEAST! marks as shown in U.S. Trademark Application Serial Nos. 85/197,756, 85/168,304, 85/543,622 and 85/783,034;

2. That the Court render a final judgment in favor of Monster and against Defendants on all claims for relief alleged herein;

3. That the Court render a final judgment that Defendants have violated the provisions of 15 U.S.C. § 1125(a) by willfully infringing the UNLEASH THE BEAST!® mark by using a false designation of origin, through the marketing, sale and promotion of Defendants' clothing;

4. That the Court render a final judgment that Defendants have willfully violated the provisions of 15 U.S.C. § 1114 by infringing Monster's U.S. Trademark Registration No. 4,975,822;

5. That the Court render a final judgment declaring that Defendants have violated California Business and Professions Code §§ 17200, *et seq.* by committing trademark infringement, and unfairly competing with Monster;

6. That the Court render a final judgment declaring Defendants have violated California common law by unfairly competing with Monster;

7. That Defendants, their agents, servants, employees, attorneys, successors, and assigns, and all other persons in active concert or participation with any of them who receive actual notice of the injunction by personal service or otherwise, be forthwith preliminarily and permanently enjoined from:

a. using the mark UNLEASH THE BEAST in connection with the advertising, promotion, or sale of clothing and related goods, and/or using confusingly similar variations of the UNLEASH THE BEAST!® mark in any manner that is likely to create the impression that Defendants' clothing originates from Monster, is endorsed by Monster, or is connected in any way with Monster;

b. manufacturing, distributing, shipping, importing, reproducing, displaying, advertising, marketing, promoting, transferring, selling, and/or offering to sell any unauthorized clothing bearing the UNLEASH THE BEAST!® mark, and/or any confusingly similar mark;

c. filing any applications for registration of any trademarks confusingly similar to the UNLEASH THE BEAST!® mark;

d. otherwise infringing the UNLEASH THE BEAST!® mark or any of Monster's other trademarks;

e. falsely designating the origin of Defendants' products;

f. unfairly competing with Monster in any manner whatsoever; and

g. causing a likelihood of confusion or injury to Monster's business reputation;

8. That Defendants be directed to file with this Court and serve on Monster within thirty (30) days after the service of the injunction, a report, in writing, under oath, setting forth in detail the manner and form in which they have complied with the injunction pursuant to 15 U.S.C. § 1116;

9. That Defendants be required to account to Monster for any and all profits derived by Defendants and all damages sustained by Monster by virtue of Defendants' acts complained of herein;

10. That Defendants be ordered to pay over to Monster all damages which Monster has sustained as a consequence of the acts complained of herein, subject to proof at trial, together with prejudgment and post-judgment interest;

11. That this case be deemed exceptional and the amount of the damages be trebled and that the amount of profits be increased by as many times as the Court deems appropriate, pursuant to 15 U.S.C. § 1117;

12. That Monster be awarded exemplary damages from Defendants pursuant to Cal. Civ. Code. § 3294;

13. That Defendants' actions be deemed willful;

14. That an award of reasonable costs, expenses, and attorneys' fees be awarded to Monster pursuant to at least 15 U.S.C. § 1117;

15. That Defendants be required to deliver and destroy all devices, literature, advertising, clothing and other unauthorized materials bearing the UNLEASH THE BEAST mark pursuant to 15 U.S.C. § 1118;

16. That Monster be awarded restitution and disgorgement; and

17. That Monster be awarded such other and further relief as this Court may deem just.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: May 9, 2017

By: */s/ Lynda J. Zadra-Symes*

Steven J. Nataupsky
Lynda J. Zadra-Symes
Matthew S. Bellinger
Nicole R. Townes

Attorneys for Plaintiff,
MONSTER ENERGY COMPANY

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff Monster Energy Company hereby demands a trial by jury on all issues so triable.

Respectfully submitted,
KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: May 9, 2017

By: */s/ Lynda J. Zadra-Symes*
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